



ECONOMIC POLICY PAPER SERIES 2010

TRADING PLACES: THE NEW DYNAMICS OF EU TRADE POLICY UNDER THE TREATY OF LISBON

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STRENGTHENING TRANSATLANTIC COOPERATION

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Cover photo: The European Parliament building in Strasbourg, France.

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1 INTRODUCTION

The drama unfolded on a sunny winter day in Strasbourg, France. “It’s clear that the way the Council, but also the United States authorities, have been treating the European Parliament is just unacceptable” commented Hennis-Plasschaert, Dutch Member of the European Parliament (MEP), on what was about to take place in Europe’s chamber of directly elected representatives. “The U.S. administration may have wrongly thought they could deal with parliament like Gulliver with the Lilliputians,” agreed the German MEP Martin Schultz.¹ And with that a major piece of legislation involving important areas of policy such as financial services regulation and terrorism went down in flames. What had happened on this memorable day in Strasbourg? What had fueled the anger of European Parliamentarians — members of an institution of which few observers of European policy abroad had even taken notice?

The ruckus began some months earlier. The entry into force of the EU Lisbon Treaty on December 1, 2009, has been described as “a momentous event in the history of European integration.”² Yet, few outside of Europe (and, indeed, only limited numbers within) were aware of its coming into force, much less of its significance. The big winner from the Lisbon Treaty is undoubtedly the European Parliament. In fact, the Lisbon Treaty massively expands the Parliament’s powers in important policy areas such as external trade, monetary policy, energy, agriculture and fisheries, personal data protection, intellectual property rights, public health, and immigration.

And so, only weeks after having been granted these powers, the European Parliament grabbed the attention of President Obama, the U.S. Congress,

and many throughout Europe when it dramatically voted down the so called ‘SWIFT agreement’ (Society for Worldwide Interbank Financial Telecommunications), which was to govern the exchange of bank data between the EU and the United States, aimed at tracking down terrorist financing sources.

The negative vote caught many on both sides of the Atlantic by surprise, leading to queries of who and what the European Parliament is. Much of the blame for the vote stemmed from a failure to properly take into account the new powers granted to the European Parliament or to accord its members the deference they felt was their due. For SWIFT, it was back to the drawing board to craft a new agreement that would prove more acceptable. The agreement was finally adopted in early July 2010, after two of the Parliament’s key demands had been met.

There are several lessons to be learned from the SWIFT episode. For trade and investment policy in particular, it is critical that the U.S. Administration and Congress invest the time necessary to learn how best to take the Parliament into account. Equally critical is to understand the changes in approach to trade and economic policymaking in Europe brought about by the Lisbon Treaty in its entirety. Three of these changes are most noteworthy.

First, the Lisbon Treaty significantly elevates the European Parliament’s role in the trade policy-making process vis-à-vis the European Commission and the European Council of Ministers (hereafter: the Council) — particularly by giving the European Parliament final and credible authority to approve or reject all trade agreements and co-decision power in adopting framework legislation. As a result, U.S. policymakers will now need to develop a strong working relationship with the European Parliament and its International Trade Committee

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¹ Reported in EuroActiv.com, “MEPs say ‘no’ to SWIFT,” February 11, 2010, at <http://www.euractiv.com/en/justice/parliament-divided-ahead-swift-vote>

² White and Case, *Insight: The Lisbon Treaty*, December 2009, at <http://www.whitecase.com/files/Publication/>

(INTA) in order to better coordinate policies and initiatives and avoid unnecessary irritants in transatlantic trade relations.

Second, the treaty expands EU external commercial competencies, thereby bringing a number of areas of policy (particularly foreign direct investment, services and trade-related intellectual property rights) under the umbrella of the European Union rather than leaving them to the individual member states to work out their own agreements. With the consolidation of external commercial competencies at the EU level, policymakers on the U.S. side will now have to engage less with the various EU member states on trade and investment matters in order to advance their interests, but will have to work more with the European Commission, the Parliament, and the European Council to reach agreements that will garner support throughout Europe.

Third, the Lisbon Treaty formally integrates trade and investment policy into the EU common framework for External Action, rendering it subject to EU External Action principles such as sustainable economic development, sustainable management of global resources, progressive improvement of the environment, and good global governance. Those interested in trade and trade agreements in Europe will have to pay close attention to potential changes in EU trade negotiating objectives and laws as these foreign policy principles formally enter the arena of European trade policy formulation.

2

A NEW PLAYER, A NEW ERA? THE EUROPEAN PARLIAMENT'S ROLE IN EU TRADE POLICY

Past EU trade policy was shaped by the relationship between two players: 1) the European Commission, the main EU administrative and executive body (functionally equivalent to the Executive Branch in the United States), and 2) the Council, in which EU member states are represented at ministerial level (similar to the United States Senate). In two key areas of trade policy — the crafting of framework legislation and the conduct of trade negotiations — the European Parliament used to have little or no role. This left trade policy largely in the purview of 1) the generally free-trade oriented career trade officials in the European Commission, with only attenuated connections to voters or constituents or political concerns, and 2) the economic affairs ministries of member states, through their collective participation in the European Council. With the entry into force of the Lisbon Treaty, that duopoly of power over trade policy has been forever changed.

The New Role for the European Parliament

Domestic Framework Legislation — On Par with the European Council

As noted, the Lisbon Treaty broadly expands the Parliament's role in adopting framework legislation. Most importantly (at least for the purposes of this paper), the Treaty grants additional so-called 'co-decision' powers to the Parliament in the areas of the Common Commercial Policy (CCP) and Common Agricultural Policy (CAP). The Treaty provides that legislation to implement Europe's Common Commercial Policy will now be done under the so-called "ordinary legislative procedure (OLP)" which is the new term for the EU's co-decision procedure. Under the OLP rules, the Council and the Parliament both need to agree on and adopt regulations proposed to them by the Commission in order for them to become law. The Commission can serve as a mediator in those cases in which the Council and the Parliament do

not agree, but regulations can only be enacted if adopted by both institutions.

Included within the Common Commercial Policy areas subject to these OLP procedures are all trade barrier regulations, trade defense instruments including anti dumping and safeguards, and the EU's trade preferences programs. This means that the Parliament, and in this area, the Parliament's international trade committee (INTA) have the same formal power to affect trade legislation as the member states represented in the Council. The inclusion of the Parliament in the shaping and enacting of trade law will also mean a longer and more complex process than in the past. If the Council and the Parliament don't see eye-to-eye initially and the process requires a full "three-readings" co-decision procedure, the legislative process will last for more than a year. Moreover, while the Commission and the Council have long worked together in a generally cooperative and smooth manner, it remains to be seen how well the Commission will work with the Parliament and how easily the Parliament and the Council will get on the same page as they respond to specific Commission proposals for new trade policies.

In fact, the Parliament is currently facing the first meaningful exercise of its new domestic legislative powers regarding trade policy, namely the adoption of implementing legislation necessary to give the EU's free trade accord with the Republic of South Korea full domestic legal effect. With that the working relationship between Parliament and Commission as well as with the Council faces its first serious test. And indeed, informal negotiations between the INTA Committee and the Council show strong disagreement over the strength and application of the agreement's safeguard clause, the *raison d'être* of which is essentially to protect EU domestic car producers from import surges of cheap Korean automobiles.

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The European Parliament at a Glance

- The European Parliament is the only directly-elected body of the European Union. The 736 Members of the European Parliament (MEPs) represent the citizens of the EU's 27 member states. They are elected once every five years by universal suffrage and serve the second largest democratic electorate in the world (375 million eligible voters in 2009).
- Together with the Council of Europe (the Council of Ministers), in which EU member states are represented, it forms the bicameral legislative branch of the EU. Parliament shares equal legislative and budgetary powers with the Council, except in a few areas where special legislative procedures apply. It likewise has equal control over the EU budget.
- The Members of the European Parliament (MEP) are organized into seven different parliamentary groups, or parties, including over 30 nonattached members, and the MEPs caucus on the basis of their party, not their nationality. The two largest groups are the European People's Party (EPP) and the Socialists & Democrats (S&D). The other groups are: Group of the Alliance of Liberals and Democrats for Europe (ALDE), Group of the Greens/European Free Alliance (G-EFA), European Conservatives and Reformists Group (ECR), Confederation Group of the European United Left - Nordic Green Left (GUE-NGL), and Europe of Freedom and Democracy Group (EFD).
- The president of the Parliament, currently Jerzy Buzek (Poland, EPP), is essentially the speaker of the Parliament. He or she presides over the plenary when it is in session. The president is also responsible for representing the Parliament externally.
- MEPs are divided up among 20 specialized standing committees. A committee consists of between 24 and 76 MEPs, and has a chair, a bureau, and a secretariat. The political make-up of the committees reflects that of the plenary assembly. The parliamentary committees meet once or twice a month in Brussels, Belgium, and Strasbourg, France. Their debates are held in public. The committees draw up, amend, and adopt legislative proposals and own-initiative reports. They consider Commission and Council proposals and, where necessary, draw up reports to be presented to the plenary assembly.
- There are several committees dealing with economic issues: ITRE - Industry, Research and Energy, DEVE - Development, INTA - International Trade, ECON - Economic and Monetary Affairs, IMCO - Internal Market and Consumer Protection, and CRIS - Financial, Economic, and Social Crisis.
- The INTA Committee was created in 2004 and is therefore relatively young. It is composed of 29 members and is now chaired by Vital Moreira (Portugal, S&D). The INTA committee is responsible for matters relating to the establishment and implementation of the Union's common commercial policy and its external economic relations.

Mirroring the controversy, the German MEP Bernd Lange from the group of social democrats stated that “the Council now finally has to move, so that we will have sufficient safeguards for the Free Trade Agreement with South Korea to protect European industries and employees from dumping.” His colleague from the German liberal party, Michael Theurer concurred in that “we require an effective safeguard clause which covers regional distortions and social and environmental norms which allow us to avoid the inherent duty drawback risks.”

But additional to a strong safeguard that can be targeted to shield certain regions of production, Parliamentarians have now stepped up to demand the right of initiative with regard to investigations on whether the domestic industry has been injured by imports or not – the procedure of which could result in the application of a safeguard duty.

However, it appears that the Parliament is already starting to develop a pragmatic and moderate *modus operandi* for its institutional competition

for political solutions with the Council: Following a recent postponement of an INTA Committee vote on the safeguard resolution, the Parliament's rapporteur on the dossier, Spanish MEP Pablo Zalba Bidegain from the centre right European People's Party, explained that there was still disagreement between the EU assembly and a larger number of EU member states, which led to the delay of the vote in order "not to close the door" for a first-reading agreement with the Council.³

The result of this first piece of joint trade legislation will likely have a strong influence on the working relationship between the Parliament and the Council in the short run. And bigger tasks are approaching quickly: The Parliament and the Council will soon be confronted with the revision of the EU regulation governing its entire unilateral trade preferences to the developing world. By the end of 2011, the current regulation will expire. The European Commission has already begun preparing a draft regulation, which will be presented to the Parliament and the European Council of Ministers for amendments and approval in the last quarter of 2010.

Drawing from recent experience, the Parliament will be eager to flex its new muscles and have its political preferences reflected in the revised regulation, so that an easy passage is far from guaranteed. In anticipation, the Commission has already proposed an extension of the current law for another two years in order avoid the disruption of preferential access for developing countries as a result of fractious domestic political wrangling.

Ratification of Trade Agreements — European "Fast Track"?

The second major elevation of the Parliament occurs with respect to the negotiation process

and the adoption of trade agreements. While the Parliament has traditionally been asked to give its assent to trade accords, rejection had been never been a political option as the Parliament lacked any involvement in negotiations, had no authority to pass implementing legislation, and was the very last in a chain of institutions to provide its final opinion on a completed and ratified agreement. In other words, EU parliamentary assent was only requested following the conclusion of negotiations by the Commission and the respective trading partner; following the Council's adoption of the agreement; and after member states' parliaments had ratified the parts of the accord where member states still held legislative competence (e.g. investment, services, and trade related IPR). At that point in the decision making process, EU parliamentary dissent was only a theoretical scenario.

This is certain to change for several reasons. First, given the progressing consolidation of EU exclusive competencies regarding trade policy, member states' parliaments will, at best, have to ratify only miniscule elements of future trade agreements that are still subject to member states' competence (e.g. trade in health care or audiovisual services). The democratic legitimacy provided by member states parliaments' ratification of trade agreements will largely be replaced by the European Parliament's consent procedure — manifested by a simple "yes" or "no" vote on the respective accord. Secondly, while the Parliament will still lack a formal role in determining the mandate or objectives of any given trade negotiation, the Commission is now formally required to regularly report to the Parliament on the progress it is making in each of its negotiations. The Parliament, on the other hand, has various means to voice its political preferences and flag preconditions for its consent early on, including by means of parliamentary resolutions, hearings, opinions, and consultations on progress

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³ Reported in EuroActiv.com, "EU - South Korea trade deal under attack," 14 September 2010, at <http://www.euractiv.com/en/trade/eu-south-korea-trade-deal-under-attack-news-497580>

in negotiations.⁴ Finally, the Parliament has an important role in the implementation of trade agreements. As outlined above, the Parliament, together with the Council, adopts the framework legislation that transforms into EU law what has been agreed upon in international negotiations.

In light of this “triple lever” on both the adoption and domestic enforcement of trade agreements, the Parliament can hardly be ignored when the Commission and the Council determine negotiating objectives and the course of negotiations. As such, the European process for passage of trade agreements has become more like the American system, where at the end of the day the U.S. Congress votes “yes” or “no” without the ability to amend or change a trade agreement, but a great deal has happened in the back and forth between the White House and the Congress long before the agreement is formally presented to the Congress for a vote. In Europe, with the implementation of the Lisbon Treaty, the threat of eventual parliamentary dissent has now become a credible one and the need to take into account the views of the Parliament from the very beginning of a trade negotiation has become imperative.

⁴ And indeed, on more than one occasion, the Parliament has called “on the Commission (...) to take due account of Parliament’s preconditions for giving its consent to the conclusion of trade agreements.” See *European Parliament resolution of 18 May 2010 on the EU Policy Coherence for Development and the “Official Development Assistance plus” concept (2009/2218(INI))*, at www.europarl.europa.eu/. The Parliament had already addressed its expanded role regarding the adoption of international agreements prior to the enforcement of the Lisbon Treaty in December 2009 on an earlier occasion. In its *Resolution of 7 May 2009 on the Parliament’s new role and responsibilities in implementing the Treaty of Lisbon (2008/2063(INI))*, the Parliament “[w]elcomes the fact that Parliament’s consent will be required for a wide range of international agreements signed by the Union; underlines its intention to request the Council, where appropriate, not to open negotiations on international agreements until Parliament has stated its position, and to allow Parliament, on the basis of a report from the committee responsible, to adopt at any stage in the negotiations recommendations which are to be taken into account before the conclusion of negotiations;” at www.europarl.europa.eu/

The EU – South Korea FTA can be seen as an early example of a new generation of EU trade agreements that will show a strong footprint of parliamentary influence. Even though the negotiations of the accord took place before the Lisbon Treaty came into force (and therefore without much engagement on the side of the INTA Committee) the Parliament has managed to render its final consent contingent on a compromise on several issues of implementation and thereby manifested its political preferences vis-à-vis the Commission, the Council and its political constituencies.

The European Parliament: Ambitions, Realities, and Opportunities

If EU trade policy is to continue to move forward smoothly and if repeated transatlantic frictions are to be avoided, a number of changes will have to occur – on both sides of the Atlantic.

First, a significant burden falls on the Commission to understand and work cooperatively with the Parliament and, in particular, with its International Trade Committee (INTA). The Commission starts from a position of great strength. Its 600-strong expert staff and decades of institutional knowledge about all aspects of EU trade policy will have to be utilized in a way that is not overwhelming to Members of Parliament, who typically have very limited staff — usually less than six aides in total (compared, for example, to Members of the U.S. House of Representatives, who can hire as many as 18 staff members each).⁵

The INTA itself is one of the newer committees of the Parliament, having come into existence as recently as 2004, and its members have had limited time to become steeped in the intricacies of international trade law and economics. The

⁵ See: “The Congress on the Rhine,” Bruce Stokes, *The National Journal*, July 10, 2010, pp/39-41.

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Commission's Directorate-General for Trade and the Council's Trade Policy Committee would be wise to expend a large amount of time and resources on communication with the INTA Committee and Parliamentary staff in order to market its policy proposals, identify 'red lines' on the side of MEPs, and explain complex technical subjects. With any luck, these efforts will allow the Commission to sound out parliamentary preferences, to integrate parliamentary political priorities into negotiating mandates, and to reach an agreement on the likely contents of trade agreements early on in the process.

Second, all those interested in trade policy in Europe, European or otherwise — whether they are private sector companies, institutions, NGOs, or others — need to seize the opportunity created by the inclusion of the European Parliament in the policy process to place European 21st century trade policy on a solid foundation of broadened and renewed public political support. Because European trade policy in the past has been conducted in the more rarefied air of the Council's Article 133 Committee closed-door sessions with the Commission, the inclusion of the Parliament provides a "bully pulpit" to speak directly to the people of Europe and to engage in the debate over the best and the worst that comes from an open trade policy and how to shape that policy.

Public support for open trade has frequently suffered from anti-globalization sentiments in the past, which have been exacerbated by the experience of the recent economic crisis and the fears of increasingly fierce international economic competition. In times when fast-paced economic adjustment is felt much more directly and immediately than the broader, longer-term, and almost abstract welfare benefits of international trade agreements, policymakers must move beyond the simplistic free trade narrative of the past if they wish to garner broad public support for their

policies. The necessity to win parliamentary and public support in the post-Lisbon era provides the Commission and member states with the opportunity to narrow the gap between public political preferences and perceptions, on the one hand, and actual EU trade policies on the other.

The good news is that it appears that the Commission has begun taking on this task in earnest and is significantly strengthening its public relations efforts. Whether its civil society consultations on specific policy initiatives, or regular civil society briefings on all aspects of EU trade policy, or the organization of multi-stakeholder conferences on particularly contentious policies, such as the Commission's much criticized trade policy affecting small and vulnerable economies of the global south, the Commission, for its part, has begun the work necessary to develop a sophisticated story that can lead to broader, deeper support for European trade policies.

Third, it will require all those who will now interact with the Parliament to understand how the Parliament works, the views of its Members, and the constituency pressures those Members face on trade issues. Moreover, the Parliament will need to learn and hear from a variety of sources on the best approaches to trade issues. Effective marketing of policy proposals vis-à-vis European civil society will be critical for the success of the Commission's and the Council's policy initiatives: public policy debates naturally constitute an important influence on MEPs.

The Parliament and the INTA Committee in particular, will have to find its voice on trade and will have to find a way to bridge the gap between the wide variety of views held by its members if it is to hold its own in the skirmishes over trade policies with the Commission or the Council. The ability to do this will depend on two major factors: its ability to get access to the information

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it needs, particularly often confidential trade negotiating documents, and the capacity to process and transform this information into negotiable political positions. It will behoove the Commission, the Council, and outside stakeholders to help the Parliament get there. A weak Parliament that responds with a “just say no” attitude, either borne of a lack of understanding of trade agreements or a desire to assert its authority or express resentments over perceived slights to its proper role is in nobody’s long-term interest.

Another arena in which the Parliament may play a much larger role is in implementing the proposals coming from a number of foreign institutions or groups, most notably the Transatlantic Economic Council, a body established in 2007 by the President of the U.S. and the President of the European Council and the EU Commission to direct economic cooperation between the US and Europe.

At the beginning of this year, the EU Commission and the U.S. administration have, in an attempt to revive joint efforts within the framework of the TEC, agreed to focus their attention on issues of strategic importance to both sides as well as upstream regulatory cooperation in innovation sectors with massive future growth potential, well before divergences lead to transatlantic disputes. But it will require much more than just an executive effort on both sides of the Atlantic in order to dismantle behind the border barriers to further integrate the transatlantic marketplace. While the U.S. administration has manifested its acknowledgement of the importance of the Parliament in this process by addressing the Parliament and its relevant committees in regular visits of high ranking officials to Brussels, U.S. Congress, on the other hand, still has a long way to go to fully exploit the potential benefits of enhanced cooperation with its counterpart on the European side.

While the Chairman of the INTA Committee, Vital Moreira, has prominently voiced his demand for more Congressional engagement on trade issues in a recent interview with the German Marshall Fund of the United States (GMF),⁶ several authors have made proposals on the modalities of strengthening inter-parliamentary ties in order to achieve greater transatlantic policy coherence, cooperation, and coordination on economic policy issues. These include, among others, regular and formal exchanges on specific policy items among Members of the relevant committees, a more constant Congressional representation at the European Parliament in Brussels, as well as building informal working relationships among Congressional staffers and staffers of the European Parliament through exchange programs.⁷ It remains to be seen, however, whether Congress will follow such recommendations. Beyond doubt, a negative response would mean the loss of great opportunities.

⁶ GMF Virtual Forum, *EU Parliament’s Trade Committee Chairman urges U.S. Congressional Engagement*, June 2, 2010, at http://www.gmfus.org/events/virtual_forum_view?vf.id=429

⁷ See, for instance, “The Congress on the Rhine,” Bruce Stokes, *The National Journal*, July 10, 2010

3 FROM PROCESS TO POLICY: WILL THERE BE CHANGES IN EU TRADE POLICY DIRECTIONS?

EU Trade Policy under the External Action Umbrella

EU trade policy, to be sure, has never been limited to the pursuit of purely commercial interests. Development and other considerations have been reflected in a wide variety of policies in the pre-Lisbon era.⁸ But with the Lisbon Treaty may come some formal changes in Europe's trade policies themselves. The Treaty of Lisbon now brings EU trade policy under the same external action guidelines as other elements of EU external policies in areas such as security and foreign policy.⁹ These guidelines include principles of "democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity,"¹⁰ along with a number of specific goals, including "foster[ing] the sustainable economic, social and environmental development of developing countries; encourag[ing] the integration of all countries into the world economy, including through the progressive abolition of restrictions of international trade; help[ing] develop international

⁸ Among the EU trade policies that focus on development or other issues are: the EU's Everything but Arms (EBA) initiative, which allows all imports except armaments from least developing countries to enter the EU duty and quota free; its GSP program, providing reduced duties for imports from 176 developing countries; and its GSP+ schemes, which provides even greater tariff reductions for goods from vulnerable developing countries to assist them in implementing programs for sustainable development and good governance; along with the negotiation of Association Agreements with the Andean Community and Central American countries as well as in the negotiation of Economic Partnership Agreements (EPA) with former European colonies of African, Caribbean, and Pacific countries (ACP). In addition, narrower measures such as import restrictions for products that are rejected by the broader European public because of environmental, social, or health concerns also mirror the political influence of European consumers.

⁹ Article 205 (Part Five, EXTERNAL ACTION BY THE UNION) provides that the Union's action on the international scene shall be guided by the principles and pursue the objectives laid down in Chapter I of Title V of the Treaty on European Union.

¹⁰ Article 21(1), Chapter 1, Title V, GENERAL PROVISION ON THE UNION'S EXTERNAL ACTION.

measures to preserve and improve the quality of the environment and the sustainable management of global natural resources; and promot[ing] an international system based on stronger multilateral cooperation and good global governance."¹¹

The Treaty seeks to ensure that all EU activities and agreements under this external action umbrella work together in pursuit of these common objectives and goals. What remains to be seen is the degree to which EU trade policy will need to be modified in order to ensure that it is coordinated with the policies in other external action areas and whether it can be shown to be fully consistent with these broader objectives and principles.

Parliament's Political Preferences Brought to the Table

Because the Lisbon Treaty endows the European Parliament with legislative powers in the field of common commercial policy for the first time, the Parliament will now have its own say in ensuring that the common commercial policy is "conducted in the context of the principles and objectives of the Union's external action," as required by Article 207. It gives the Parliament the opportunity to incorporate ITSR preferences, which is all but certain to result in additional emphasis on non-commercial aspects of EU trade policy.

As with all politicians facing election cycles that are much shorter than the time frame over which open trade policies can deliver measurable benefits, Members of the European Parliament are likely to be understandably reluctant to spend much time promoting general, broad open trade policies. Rather, MEPs are likely to initially focus their trade interventions on two issues: 1) issues relating to the immediate welfare concerns of voters and political supporters, such as job security and protection

¹¹ Article 21(2), Chapter 1, Title V, GENERAL PROVISION ON THE UNION'S EXTERNAL ACTION.

The Treaty of Lisbon now brings EU trade policy under the same external action guidelines as other elements of EU external policies in areas such as security and foreign policy.

of domestic production as well as consumer protection; and 2) those “trade and” issues which reflect the convictions shared by large parts of European civil society that trade agreements must also result in greater protection of the environment and human rights, and must do more to promote sustainable development and alleviate poverty.

Consumers and Protectionism

As discussed above, among the first trade agreement that will come before the Parliament in the post-Lisbon era is the recently completed Free Trade Agreement (FTA) with South Korea. At the time of its negotiation, the concerns of the EU automakers that Europe could be flooded with imports of Kia and Hyundai cars once the 10 percent import duty is eliminated under the FTA were well known to the Commission officials conducting the negotiations. Now that the agreement must be ratified by the Parliament, the auto industry has pulled out all the stops to lobby MEPs to turn down the agreement because they believe their concerns have not been adequately addressed by the Commission. The showdown may force the Commission and the Council to accept a strong safeguard mechanism designed by the Parliament as the price for getting Parliament’s approval. Such an addition to the Korea FTA could foreshadow similar changes in a number of the significant upcoming FTA agreements, including those with India, Canada, Vietnam, or Singapore.¹²

Another area in which the Parliament’s engagement could result in a change in European trade policy is that of trade defense instruments — anti-dumping, anti-subsidy, or safeguard measures imposed on imports. Currently, anti-dumping or anti-subsidy measures are largely the province of

the Commission, which receives petitions from European industries contending that dumped or subsidized imports are causing them harm. The Commission investigates such claims and makes determinations that can be imposed on a provisional basis until ready for final action in the form of a Council resolution to impose definitive measures on the imports. While the Lisbon Treaty did not bring about any formal change to the current practice in Europe, it remains to be seen whether individual MEPs will seek to use their increased influence in the trade arena to tip the scales in any given case in favor of the imposition of specific duties or measures that would protect their domestic industry constituents.

MEPs should, moreover, be expected to position themselves as advocates of consumer protection. One way of capitalizing on European anxiety with regard to unforeseeable effects of certain product characteristics will be a parliamentary competition for the broadest possible interpretation of the “precautionary principle.” In the name of precaution, European policy makers aim at justifying the protection of consumers and the environment from the presumed adverse effects of imported products containing genetically modified organisms (GMO), so called “novel foods,” products derived from offspring of cloned livestock, hormone-treated beef, or chlorine-rinsed poultry.

With the Parliament growing into its new role, the EU is now much less likely to pass any trade legislation in the near future that will allow for imports of such or similar products. Convincing the Parliament otherwise will take a strong effort by major trading partners like the United States, and therefore its decision makers and negotiators, as they will now have to lobby the European Parliament, too, to obtain market access for their innovations. As European scholars point out, “Members of the European Parliament may acquire more influence on the scope and application

¹² The Commission currently conducts negotiations with several commercially potent partners, such as India, Canada, Vietnam, and Singapore.

of food safety and SPS control measures, the development of EU agricultural product quality standards, and the elaboration of labeling requirements. Given the strong role of consumer opinion (possibly encouraged by the agricultural lobby) in driving ever higher formal and private sector SPS standards, the more central involvement of Parliamentarians in standard setting could result in an even more rapid escalation.¹³

Another area of trade policy that will be subject to increasing indirect parliamentary influence is trade in agricultural products. Not only trade and investment but also the EU's Common Agricultural Policy (CAP) will be co-decided upon by the Council and the Parliament, including the EU's domestic supply management schemes and subsidies for sugar and other sensitive agricultural products. Parliamentary responsibility for agricultural policy, located in the Committee on Agriculture, has quickly translated into strong interest for the implications of currently negotiated trade agreements for domestic agricultural production and welfare of farmers. For instance, members of the Agriculture Committee have made clear that they will very closely scrutinize the Commission's negotiations on a free trade agreement with Mercosur countries (Argentina, Brazil, Paraguay, Uruguay), which have been resumed earlier this year, and have voiced strong concerns over the implications for EU agriculture.¹⁴

¹³ Stevens, Christopher & Goodison, Paul, *The Lisbon Treaty and Commonwealth Developing Countries: Implications for ACP-EU trade and trade negotiations*, Draft Report, June 2006

¹⁴ See, for instance, *Parliamentary Debate*, July 8, 2010, Strasbourg, *Implications for EU agriculture of the reopening of negotiations with Mercosur with a view to concluding an Association Agreement - Preparations for the forthcoming EU-Brazil summit on 14 July 2010 in Brasilia*, at <http://www.europarl.europa.eu/sides/getDoc.do?type=PV&reference=20100708&secondRef=ITEM-004&format=XML&language=EN>

Sustainable EU Trade Policy and Policy Coherence for Development

Reflecting shared political preferences of the broader European public, parliamentarians from various committees have, in the name of policy coherence for development (PCD), demonstrated much interest in the nexus of trade and development policy and in issues of trade and sustainability more generally. These include negotiations over the Economic Partnership Agreements (EPAs) with the African, Caribbean and Pacific (ACP) countries,¹⁵ the upcoming revision of the GSP, GSP+, and EBA schemes,¹⁶ EU agricultural exports to developing countries, patent restrictions that affect access to medicines in poor countries, environmental and social standards embedded in FTAs, and animal welfare concerns.

In its May 2010 resolution on EU Policy Coherence for Development, which lists more than 20 broad proposals for trade related PCD, the Parliament “[r]eiterates the importance of coherence between trade and development policies and stresses that the implementation of the Sustainable Development Chapters in the trade agreements should serve as an opportunity for the European Commission to promote good governance and the application of fundamental European values.”¹⁷ In other words, the Parliament is aiming for nothing less than the export of the European value system through its trade policy.

¹⁵ See *European Parliament resolution of 20 January 2010 on the second revision of the ACP-EC Partnership Agreement (the “Cotonou Agreement”) (2009/2165(INI))*, at www.europarl.europa.eu/

¹⁶ See *European Parliament resolution of 10 March 2010 on the regulation applying a scheme of generalised tariff preferences*, at www.europarl.europa.eu/

¹⁷ *European Parliament resolution of 18 May 2010 on the EU Policy Coherence for Development and the “Official Development Assistance plus” concept (2009/2218(INI))*, at www.europarl.europa.eu/

In that spirit, the Parliament should be expected to push for the expanded use of instruments that leverage domestic values in foreign jurisdictions. These include the enactment of market access conditions based on trading partners' compliance with internationally recognized human rights and social, environmental, and animal welfare standards. Such conditional market access is inherent to the EU's GSP+ scheme, which grants non-reciprocal trade preferences contingent on the ratification of and general compliance with certain social and human rights accords.

In addition, however, many parliamentarians may be quick to demand the application of trade measures that are connected to the employment of specific production and processing methods (PPM) of goods and services abroad, i.e., the establishment of market access standards contingent upon the quality of the production process in the exporting country rather than the quality of the end products themselves. PPM-based conditional market access is often deemed to provide leverage for the enforcement of internationally recognized human rights, social, environmental, and animal welfare standards in exporting countries. Yet, expanded use of conditional market access will inevitably fragment the EU market access landscape and decrease transparency and predictability for exporters to the EU.

4 CONCLUSION

The implementation of the Lisbon Treaty is a watershed event in the development of a more united Europe. In the realm of trade policy, it remains to be seen whether the Treaty will allow Europe to set a new, more certain course on open trade. The opportunities are great. Because the Treaty places more trade policy realms — all services, investment, trade-related intellectual property and more — under the auspices of the European Union, it leaves very little to the individual member states or to the possibility of disparate policies. Lisbon's requirement that all of Europe's trade policies adhere to the same guidelines and goals as Europe's foreign, development, and other external policies may result in a more coherent, more widely accepted policy. At the same time, the empowerment of the Parliament and the addition of a Parliamentary role in the crafting of trade legislation and the approval of trade agreements will certainly add complexity, delays, and an increased politicization to European trade policy. The challenge — for other EU institutions and stakeholders, for the European trade policy community, and ultimately for Europe's trading partners — will be to ensure that the Parliament is given the support that it needs to use this opportunity to broaden and deepen the understanding of and commitment to a better, stronger open trade policy throughout the whole of Europe. The consequences either way will be great. Only time will tell.

Lisbon's requirement that all of Europe's trade policies adhere to the same guidelines and goals as Europe's foreign, development, and other external policies may result in a more coherent, more widely accepted policy.

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